

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DONALD L. JONES,	)	
	)	
Plaintiff,	)	NO. CV-05-3110-LRS
	)	
v.	)	
	)	ORDER GRANTING DEFENDANTS'
	)	MOTION TO DISMISS
STATE OF WASHINGTON, et al.,	)	
	)	
Defendants.	)	

**BEFORE THE COURT** is Defendants' Motion To Dismiss (Ct. Rec. 34) filed May 18, 2006 with hearing set without oral argument requested on June 19, 2006.

Defendants request that the Court dismiss Plaintiff's Complaint in its entirety pursuant to Fed.R.Civ.P. 12(b) and 12(c). First, Defendants argue that pro se Plaintiff Jones fails to state a claim as a matter of law. Second, Jones has failed to properly serve Liz Luce and Ron McKenna. Third, Jones' claims in federal court are prohibited by the Eleventh Amendment.

**DISCUSSION**

Plaintiff filed his Complaint on December 20, 2005 and his Amended Complaint on January 4, 2006. Plaintiff was in a public establishment on or about December 8, 2005 and received a citation pursuant to RCW 70.160.030 for smoking in a public place. See citation attached to Complaint. Plaintiff Jones seeks relief as a

1 result of receiving a citation for smoking in violation of RCW  
2 70.160.030. Jones asserts the Clean Indoor Air Act codified at RCW  
3 70.161 violates his constitutional right to control his own health  
4 and discriminates against smokers. Jones further asserts he has a  
5 contractual right to patronize certain establishments which  
6 previously allowed smoking. Jones also complains that his  
7 constitutional right to a jury [for his civil infraction] was  
8 violated.

9 The Court finds that Plaintiff has not properly served named  
10 Defendants Luce and McKenna. Plaintiff was afforded the opportunity  
11 to effect proper service by April 24, 2006 and has failed to serve  
12 either Ms. Luce or Mr. McKenna. Ct. Rec. 33, at 3. Further, the  
13 State [Department of Licensing] cannot be sued in federal court  
14 based upon the Eleventh Amendment.

15 Even if Jones were to pass the jurisdictional deficiencies in  
16 his case, a liberal construction of his Complaint reveals that he  
17 has not set forth specific facts upon which he relies in claiming  
18 the liability of each Defendant. With regards to the statute  
19 prohibiting smoking in public places and the State's actions  
20 complained of, Jones must show that there is no set of circumstances  
21 in which the statute can be constitutionally applied. Jones has  
22 failed to identify any constitutional challenge which would overcome  
23 the Legislature's power to restrict individual rights for the health  
24 and benefit of Washington citizens. The State has broad authority  
25 and discretion to prescribe laws to promote health and general  
26 welfare of its citizens and to act within its police powers to  
27 protect the health of its citizens.

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1 Finally, Jones does not have a right to a jury trial for the  
2 civil infraction identified in his Complaint. This statute, RCW  
3 70.160.070, provides that violations of the Clean Indoor Air Act are  
4 subject to the same enforcement as traffic citations. This Court is  
5 not the proper forum for contesting Plaintiff's citation.

6 Accordingly,

7 **IT IS ORDERED** that:

8 1. Defendants' Motion To Dismiss, **Ct. Rec. 34**, filed May  
9 18, 2006 is **GRANTED**.

10 2. Defendants' Motion to Continue Response to Plaintiff's  
11 Summary Judgment, **Ct. Rec. 30**, is **DENIED as MOOT**. Plaintiff's  
12 summary judgment was denied without prejudice in Ct. Rec. 26.

13 The District Executive is directed to file this Order and  
14 provide copies to counsel and *pro se* Plaintiff, and the file be  
15 **CLOSED** in this matter.

16 **DATED** this 20th day of June, 2006.

17  
18 *s/Lonny R. Suko*

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20 LONNY R. SUKO  
21 United States District Judge  
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